HOUSE RESEARCH ORGANIZATION • TEXAS HOUSE OF REPRESENTATIVES
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HOUSE RESEARCH ORGANIZATION

daily floor report

Monday, May 01, 2017
85th Legislature, Number 60
The House convenes at 2 p.m.
Part Two

Twenty-eight bills are on the daily calendar for second-reading consideration today. The bills analyzed or digested in Part Two of today's *Daily Floor Report* are listed on the following page.

Dwayne Bohac
Chairman
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HOUSE RESEARCH ORGANIZATION

Daily Floor Report

Monday, May 01, 2017

85th Legislature, Number 60

Part 2

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SUBJECT: Recognizing academic success by former special education students

COMMITTEE: Public Education — favorable, without amendment

VOTE: 11 ayes — Huberty, Bernal, Allen, Bohac, Deshotel, Dutton, Gooden, K. King, Koop, Meyer, VanDeaver

0 nays

WITNESSES: For — Janna Lilly, Texas Council of Administrators of Special Education; (*Registered, but did not testify*: Audrey Young, Apple Springs ISD President, Board of Trustees; Chris Masey, Coalition of Texans with Disabilities; Steven Aleman, Disability Rights Texas; Grace Chimene, League of Women Voters of Texas; C LeRoy Cavazos-Reyna, San Antonio Hispanic Chamber of Commerce; Barry Haenisch, Texas Association of Community Schools; Casey McCreary, Texas Association of School Administrators; Grover Campbell and Vernagene Mott, Texas Association of School Boards; Mark Terry, Texas Elementary Principals and Supervisors Association; Ellen Arnold, Texas PTA; Colby Nichols, Texas Rural Education Association; Dee Carney, Texas School Alliance; Portia Bosse, Texas State Teachers Association; Kyle Piccola, The Arc of Texas; Tami Keeling, Victoria ISD, TASB)

Against — (*Registered, but did not testify*: Heather Sheffield, Texans Advocating for Meaningful Student Assessment)

On — (*Registered, but did not testify*: Kara Belew, Shannon Housson, Gene Lenz, Texas Education Agency)

BACKGROUND: Education Code, sec. 39.053 establishes performance indicators of academic achievement under the public school accountability system, which uses five domains to measure district and campus performance. Sec. 39.202 requires the Commissioner of Education to establish an academic distinction designation for districts and campuses that attain certain measurements of postsecondary readiness.

The Texas Education Agency uses a performance-based monitoring

analysis system to collect data and report annually on the performance of school districts and charter schools in selected program areas, including special education. One indicator measures the percent of students formerly served by special education who met their phase-in performance standard on the State of Texas Assessments of Academic Readiness (STAAR) grade 3 through 8 assessments in mathematics, reading, science, social studies, and writing.

DIGEST:

HB 61 would add mechanisms to the public school accountability system to recognize academic performance by students formerly participating in a special education program.

The bill would add an indicator to domain 4 for evaluating the performance of students who formerly received special education services and who subsequently achieved satisfactory academic performance on STAAR assessments in grades 3 through 8. This would apply to students who participated in a special education program for the preceding year and who were not participating in such a program for the current year.

The Commissioner of Education would be required by rule to establish an academic distinction designation for districts and campuses for outstanding performance in attainment of postsecondary readiness that included the percentages of students who formerly received special education services who achieved satisfactory academic performance on state assessments in grades 3 through 8.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2017, and would apply beginning with the 2017-18 school year.

SUPPORTERS SAY:

HB 61 would recognize districts and campuses with successful special education programs by establishing a new performance indicator and an academic distinction for successful STAAR performance by students who exit the special education program. Districts currently can earn academic distinction designations for positive outcomes among the general student population, and they should be able to earn a similar designation for successfully serving students in special education. School districts that

invest significant time and resources in helping students with disabilities achieve academic success should be allowed to earn this new distinction on state accountability reports.

Some students who need special education services such as speech therapy for a period of time may at some point no longer need those services. Districts already are required to report to TEA how these students perform in a category called "special education year-after-exit STAAR 3-8 passing rate." For example, in 2016 statewide, 13,051 of 18,074 students (72.2 percent) in this category passed their STAAR reading exams and 13,601 of 17,768 (76.5 percent) passed their math exams.

The academic distinction would serve as an incentive for districts to strive for the highest level of support for all students, including those served by special education. It is unlikely the bill would result in students being removed from special education programs before they were ready because school districts must observe strict eligibility standards for services. Satisfactory performance on STAAR exams is only one measure of whether a student should continue to receive special education services.

OPPONENTS SAY:

By rewarding districts for former students who pass STAAR exams, HB 61 could result in some districts removing students from special education services before they were ready. Amid concerns about limiting the number of students receiving special education services, the state should not create an academic distinction designation centered on students who exit these programs.

SUBJECT: Creating a temporary health insurance risk pool

COMMITTEE: Insurance — committee substitute recommended

VOTE: 9 ayes — Phillips, Muñoz, R. Anderson, Gooden, Oliverson, Paul, Sanford, Turner, Vo

0 nays

WITNESSES: For — (*Registered, but did not testify*: Patricia Kolodzey, Blue Cross Blue Shield; Amanda Martin, Texas Association of Business; Jamie Dudensing, Texas Association of Health Plans; Lee Manross, Texas Association of Health Underwriters; Becky Parker; Lacci)

Against — None

On — (*Registered, but did not testify*: Nancy Clark, Doug Danzeiser, Anthony Infantini, Texas Department of Insurance)

BACKGROUND: SB 1367 by Duncan, enacted by the 83rd Legislature in 2013, dissolved the Texas Health Insurance Pool. In the years preceding the implementation of the federal Patient Protection and Affordable Care Act, the pool had served as a health insurer of last resort for Texans who, due to medical conditions, were unable to obtain coverage through the private health insurance market.

DIGEST: CSHB 3226 would allow the Texas Commissioner of Insurance, if federal funds became available, to apply for such funds and use them to establish and administer a temporary health insurance risk pool. Its purpose would be to provide a temporary mechanism for maximizing available federal funding to assist Texas residents in obtaining access to quality health care at a minimum cost to the public. The pool could not be used to expand the state's Medicaid program, including Medicaid managed care.

Subject to federal requirements, the bill would allow the commissioner to use pool funds to provide:

- alternative individual health insurance coverage to eligible individuals that did not diminish the availability of traditional commercial health care coverage;
- funding to individual health benefit plan issuers that cover those with certain health or cost characteristics in exchange for lower enrollee premiums; or
- a reinsurance program for health plan issuers in the individual market in exchange for lower enrollee premiums.

The commissioner could enter into an appropriate contract or agreement with a similar pool in another state for joint administrative functions, another organization for administrative functions, or a federal agency. The commissioner could contract for stop-loss insurance for risks incurred by uses of pool funds.

The bill would prohibit the commissioner from using state funds to fund the pool unless funds were specifically appropriated for that purpose. Federal funds could be used for administration.

Notwithstanding SB 1367, which abolished the Texas Health Insurance Pool in 2013, the commissioner could use funds appropriated to the Texas Department of Insurance (TDI) from the Healthy Texas Small Employer Premium Stabilization Fund (PSF) to fund the pool under the bill, except for paying salaries and salary-related benefits. The commissioner would be required to transfer an equal amount from the PSF to TDI to pay the direct and indirect costs of the pool. The commissioner also would transfer any money remaining outside the state treasury in the Texas Treasury Safekeeping Trust Company account established by SB 1367 to the PSF on the effective date of the bill.

The commissioner could use funds appropriated to TDI to develop and implement public education, outreach, and facilitated enrollment strategies for the exclusive purpose of implementing the bill's provisions. The commissioner could contract for marketing organizations for this purpose.

The bill would allow the commissioner of insurance to apply for a state innovation waiver of applicable provisions of the federal Patient Protection and Affordable Care Act and any applicable regulations or

guidance with respect to health insurance coverage in Texas for a plan year beginning on or after January 1, 2017. The commissioner could take any action he or she considered appropriate for the application. The bill would authorize the commissioner to implement a state plan that met the requirements of a granted ACA state innovation waiver if the plan was consistent with state and federal law and approved by the U.S. Secretary of Health and Human Services.

Any other law notwithstanding, a program created by the bill would not be subject to any state tax, regulatory fee, or surcharge, including a premium or maintenance tax or fee.

The commissioner could adopt necessary rules to implement the bill's provisions, including rules to administer the pool and distribute its money. Beginning June 1, 2018, TDI would submit a report to the governor, lieutenant governor, and House speaker summarizing risk pool-related activities conducted in the previous year, as well as information relating to net written and earned premiums, plan enrollment, administration expenses, and paid and incurred losses.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2017, and would expire August 31, 2019.

SUPPORTERS SAY:

CSHB 3226 would provide flexibility for Texas to reconstitute the state's former high-risk health insurance pool or to implement another option using federal funds if the federal Affordable Care Act were reformed or abolished.

The bill appropriately would prohibit pool funds from being used to expand Medicaid. No state funds could be used for the pool unless they were specifically appropriated for that purpose.

CSHB 3226 would allow the commissioner to use pool funds to provide alternative individual health insurance coverage to eligible individuals, to provide funding to individual health benefit plan insurers covering individuals with certain characteristics in exchange for lower individual health premiums, or to provide a reinsurance program for carriers in the

individual market in exchange for lower health plan premium rates. The alternative individual health coverage allowed under the bill would not diminish the availability of traditional commercial health care coverage.

The bill would not give preference to one use of pool funds over another and would allow the implementation of a reinsurance option if needed.

OPPONENTS SAY:

CSHB 3226 should use federal funds, if necessary, to develop a reinsurance option that would cost significantly less for patients instead of reinstituting the former Texas Health Insurance Pool. A reinsurance program would work by backstopping insurers' claims on the individual market. This would be preferable to restarting the dissolved Texas Health Insurance Pool, which was a segregated high-risk insurance pool that offered costly insurance.

NOTES:

A companion bill, SB 2087 by Hancock, was approved by the Senate on April 26.

SUBJECT: Addressing sexual assault at institutions of higher education

COMMITTEE: Higher Education — committee substitute recommended

VOTE: 9 ayes — Lozano, Raney, Alonzo, Alvarado, Button, Clardy, Howard, Morrison, Turner

0 nays

WITNESSES: For — Chris Kaiser, Texas Association Against Sexual Assault; Aaron Setliff, Texas Council on Family Violence; Mary McKinnon; (*Registered, but did not testify*: Gwen Daverth, Texas Campaign to Prevent Teen Pregnancy; Cris Dishman; CJ Grisham; Sacha Jacobson; Jennifer Thibeaux;)

Against — None

On — Elizabeth Medina, Concordia University Texas; Heather Hadlock, Independent Colleges and Universities of Texas; Ray Bonilla, Texas A&M University System; Bill Franz, Texas Higher Education Coordinating Board; Andrew Cantey, Tyler Junior College; LaToya Smith, University of Texas at Austin

BACKGROUND: HB 699 by Nevárez, enacted by the 84th Legislature in 2015, required each Texas higher education institution to adopt a policy on campus sexual assault, including definitions of prohibited behavior, sanctions for violations, and the protocol for reporting and responding to campus sexual assault. The bill established Education Code, sec. 51.9363.

DIGEST: CSHB 16 would repeal Education Code, sec. 51.9363 and add a new subchapter under ch. 51 with requirements for policies on reporting and responding to campus sexual harassment, sexual assault, dating violence, and stalking at the state's higher education institutions and private or independent colleges or universities approved for purposes of the tuition equalization grant program.

Campus policies. CSHB 16 would require public and certain private

higher education institutions to establish a policy on sexual harassment, sexual assault, dating violence, and stalking. The policy would have to include:

- definitions of prohibited behavior and sanctions for violations;
- a protocol for reporting and responding to reports;
- measures to protect victims from retaliation during the disciplinary process; and
- a statement emphasizing the importance of victims going to a hospital for treatment and preservation of evidence as soon as practicable and of reporting the crime to law enforcement.

The policy would have to be approved by the institution's governing board and reviewed every biennium and revised if necessary. The policy would need to be made available to the students, faculty, and staff members by including it in the institution's student and employee handbook and on a web page on the institution's website dedicated solely to the policy.

Institutions would have to require entering freshmen and undergraduate transfer students to attend an orientation on the policy before or during the student's first semester. The orientation could be provided online and would emphasize the importance of a victim going to a hospital for treatment and preservation of evidence as soon as practicable after the incident and that criminal matters should be handled primarily by law enforcement.

The bill would require institutions to develop and implement a comprehensive prevention and outreach program, which would address strategies to prevent campus incidents of sexual harassment, sexual assault dating violence, and stalking. The program would include a victim empowerment program, a public awareness campaign, primary prevention, bystander intervention, and risk reduction.

Institutions also could adopt a policy that included incidents other than sexual harassment, sexual assault, dating violence, or stalking.

Online reporting system. CSHB 16 would require higher education

institutions to establish an online reporting system for students and employees of the institution anonymously to report allegations of sexual harassment, sexual assault, dating violence, and stalking, regardless of where the alleged incident occurred. The bill would require institutions to develop and establish the online reporting system by January 1, 2018.

Amnesty for reporting. The bill would provide amnesty for minor violations of the institution's code of conduct occurring at or near the time of the incident to students who made good faith reports on being either a victim of or witness to sexual harassment, sexual assault, dating violence, or stalking. Amnesty would not be extended to an individual who reported the individual's own involvement in the commission of an act of sexual harassment, sexual assault, dating violence, and stalking. Institutions could investigate and determine whether or not the report was made in good faith.

Requests not to investigate. If an alleged victim of an incident requested the institution not to investigate it, the bill would allow institutions to investigate in a way that complied with confidentiality requirements. When determining whether to investigate the alleged incident, the institution would have to consider:

- the seriousness of the alleged incident;
- whether the institution had received other reports of incidents committed by the alleged perpetrator or perpetrators;
- whether the alleged incident posed a risk of harm to others; and
- any other factors the institution deemed relevant.

If the institution, based on the victim's request, decided not to investigate an alleged incident, the institution would have to inform the victim and take the necessary steps to protect the health and safety of the institution's community.

Disciplinary process for certain violations. An institution that initiated a disciplinary process against a student enrolled there who had violated its code of conduct by committing sexual harassment, sexual assault, dating violence, or stalking would be required to take certain steps. It would have to provide the student with a meaningful opportunity to admit or contest

the alleged violation at a disciplinary proceeding, ensure that both the student and the alleged victim had reasonable and complete access to all evidence related to the alleged violation in a specified timeframe, and permit the student and the alleged victim to safely question witnesses of the alleged violation in an appropriate manner, as determined by the institution.

Student withdrawal or graduation pending disciplinary charges. If a student with a pending disciplinary charge alleging the violation of an institution's code of conduct withdrew or graduated, CSHB 16 would prohibit the institution from ending the disciplinary process or issuing a transcript to the student until the institution made a final determination of responsibility. The institution also would be required to expedite its disciplinary process to accommodate the student's interest in a speedy resolution. The bill would require an institution to provide information to another institution, upon request, relating to a determination that a student enrolled at the first institution violated its code of conduct by committing sexual harassment, sexual assault, dating violence, or stalking.

Trauma-informed investigation training. The bill would require peace officers employed by higher education institutions to complete training on trauma-informed investigation into allegations of sexual harassment, sexual assault, dating violence, and stalking.

Memoranda of understanding. Institutions would have to enter into a memorandum of understanding with one or more local law enforcement agencies, advocacy groups, and hospitals or other medical resource providers to facilitate effective communication and coordination on allegations of sexual harassment, sexual assault, dating violence, and stalking.

Designated employees. CSHB 16 would require an institution to designate one or more personnel to act as responsible employees for the purposes of Title IX and one or more employees to whom students enrolled at the institution could speak confidentially concerning sexual harassment, sexual assault, dating violence, and stalking. Institutions would have to inform students about these designated employees.

The bill would also require the commissioner of higher education to establish an advisory committee to develop recommended training for these designated employees. The committee would meet annually to review and update the training as necessary.

Confidentiality. CSHB 16 would provide confidentiality for alleged victims, persons who reported an incident, and persons found to have been wrongfully accused of sexual harassment, sexual assault, dating violence, or stalking. Unless waived in writing, the identity of these individuals would be confidential and not subject to disclosure under the Public Information Act. The person's identity could be disclosed only to the institution as necessary to investigate a report, a law enforcement officer as necessary to conduct a criminal investigation, or a health care provider in an emergency situation. Information on an incident disclosed to a health care provider employed by an institution would be confidential and could be shared only with the victim's consent. The health care provider would have to share aggregate data or other non-identifying information on an incident with the institution's Title IX coordinator.

Report. The bill would require higher education institutions to submit to their governing body annually a report on any reports of sexual harassment, sexual assault, dating violence, or stalking received by the institution during the preceding academic year. The report could not identify any person. Reports would be subject to disclosure under the Public Information Act, including those from applicable private or independent institutions.

Compliance. If the Texas Higher Education Coordinating Board determined an institution was not in substantial compliance with the bill, it could reduce state funding to the institution for the following academic year in an amount determined by the board. The coordinating board could assess an administrative penalty of up to $2 million against applicable private institutions or declare students at those institutions ineligible for tuition equalization grants. Penalty amounts would depend on the seriousness of a violation. Private institutions could not pay a penalty using state or federal money. The bill would require the board to provide both public and private institutions with written notice of its reasons for taking an action and would allow institutions to appeal such actions.

Rulemaking and effective date. The coordinating board would be required to adopt rules to implement and enforce the bill, including defining relevant terms and ensuring that implementation of the bill complied with federal law on confidentiality of student educational information.

The bill would take immediate effect if finally passed by a two-thirds vote of the membership of each house. Otherwise, it would take effect September 1, 2017, and would apply beginning with the 2017-18 academic year.

SUPPORTERS SAY:

CSHB 16 would establish critical protections for victims of sexual harassment, sexual assault, dating violence, and stalking at the state's colleges and universities. The bill also would expand on current state law by specifically adding sexual harassment, dating violence, and stalking as conduct for institutions of higher education to include in their policies and procedures for responding to incidents and protecting students.

The bill would allow students and employees to use an online reporting portal to report sexual harassment, sexual assault, dating violence, and stalking without fear of retaliation or punishment. This would help increase reporting, as a majority of victims of sexual assault and related abuse are hesitant to come forward with allegations.

The bill would include enforcement mechanisms to ensure both private and public institutions provided opportunities for reporting sexual assault and related conduct on their campuses and adequately responded to those reports. If institutions were found to be noncompliant with the bill, public institutions could lose state funding, and private institutions could be fined up to $2 million or lose access to the state funded tuition equalization grants. The bill would allow the Texas Higher Education Coordinating Board to make determinations on compliance for individual institutions regarding specific circumstances, which would create accountability for the institutions and flexibility for the coordinating board.

CSHB 16 would require institutions to provide needed training for law enforcement on trauma situations and on sexual harassment, sexual

assault, dating violence, and stalking. The bill also would require institutions to partner with community victim service providers, rape centers, and medical providers, which is essential for effective coordination and communication. One report indicates that at the University of Texas at Austin, 15 percent of female undergraduates reported being raped since their enrollment, which underscores the need for institutions of higher education to establish the protections in the bill.

The bill would provide a framework for institutions to develop policies and procedures to respond to reports of sexual abuse. Institutions could hold disciplinary proceedings to investigate and make findings, but this process would not extend beyond the possible issuance of an administrative penalty for a violation against school policy. Although these disciplinary proceedings are not court proceedings, the bill would not preclude students from having an attorney at the administrative proceeding.

The bill also would provide safeguards for those accused of sexual harassment, sexual assault, dating violence, and stalking by requiring that institutions provide the accused with access to evidence and opportunities to question witnesses. This is necessary because research indicates that false reporting occurs between 2 percent and 10 percent of the time.

The bill would comply with Title IX, and institutions would harmonize the policies developed and implemented under the bill to address sexual abuse on campus with these federal requirements.

OPPONENTS SAY:

CSHB 16 would offer minimal due process and privacy rights for alleged victims and perpetrators. To better protect student rights, the bill should stipulate that only noncriminal violations of institutional policy could be arbitrated through the institution and should guarantee students' rights to have a lawyer at these disciplinary proceedings.

The bill would not provide enough guidance to institutions on how to investigate allegations made through the online portal or address the possibility of increased false accusations. To guard against this possibility, institutions should ensure that the burden of proof remained on the accuser, rather than the accused, and go further to protect the rights of the

accused.

CSHB 16 would guarantee amnesty for a person who made a report "in good faith" without defining the term or requiring an institution to investigate whether a report had been filed in good faith. Because there are individuals who make false claims, institutions of higher education should be required to hold disciplinary proceedings for a person found to have filed a false report or a report not made in good faith.

The bill could remove tuition equalization grants from private institutions if they were determined to have been noncompliant with the policy, which would unfairly penalize students who depend on this funding.

The bill also would duplicate Title IX requirements, which already are implemented at most institutions.

OTHER OPPONENTS SAY:

While the CSHB 16 rightly encourages an integrated approach to responding to sexual assault and related conduct, requirements for partnering with local law enforcement agencies, advocacy groups, and hospitals could be difficult for smaller and more rural institutions. The bill also would not provide enough guidance on what constitutes "substantial compliance," which could leave institutions unsure on how they could adequately adhere to the bill's requirements.

SUBJECT: Prohibiting the award of attorney's fees in tax lawsuits against the state

COMMITTEE: Ways and Means — favorable, without amendment

VOTE: 11 ayes — D. Bonnen, Y. Davis, Bohac, Darby, E. Johnson, Murphy, Murr, Raymond, Shine, Springer, Stephenson

0 nays

WITNESSES: For — None

Against — (*Registered, but did not testify*: Jonathan Saenz, Texas Values)

On — (*Registered, but did not testify*: Ray Langenberg, Comptroller of Public Accounts)

BACKGROUND: Under Tax Code, sec. 112.108, a court may not issue a restraining order, injunction, declaratory judgment, or other similar relief against the state relating to a tax or fee. That section also prohibits either party from recovering attorney's fees upon a grant of declaratory relief.

In *R Communications, Inc. v. Sharp*, 875 S.W.2d 314 (TX. 1994), the Supreme Court of Texas ruled that sec. 112.108, in precluding a taxpayer from obtaining judicial review of its tax liability by means of a declaratory action, when combined with other provisions, violated the open courts provision in the Texas Constitution.

In *Rylander v. Bandag*, 18 S.W.3d 296 (TX. App. 2000), the Third Court of Appeals ruled that the prohibition against recovery of attorney's fees in sec. 112.108 was not severable from the remainder of the section and was therefore unconstitutional. The court further ruled that the trial court did not err in awarding attorney's fees under the Uniform Declaratory Judgments Act.

DIGEST: HB 2669 would repeal Tax Code, sec. 112.108. The bill also would create a new section prohibiting a court from awarding attorney's fees in a suit against the state that seeks relief relating to a tax imposed or collected by

the comptroller.

This bill would take effect September 1, 2017, and would apply only to a lawsuit beginning on or after that date.

NOTES:

According to the Legislative Budget Board, the bill could reduce an indeterminate amount of state obligations to pay attorney's fees in tax litigation.

A companion bill, SB 1191 by Hughes, was referred to the Senate Finance Committee on March 9.

SUBJECT: Revising drug penalty groups 1 and 3 to include new substances

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 6 ayes — Moody, Canales, Gervin-Hawkins, Hefner, Lang, Wilson

0 nays

1 absent — Hunter

WITNESSES: For — (*Registered, but did not testify*: Scott Peal, Chambers County Attorney's Office; Terrie Mogavero, East Texans Against K2; Jessica Goddard; Tina Pihota)

Against — (*Registered, but did not testify*: Nicholas Hudson, American Civil Liberties Union of Texas; Thomas Parkinson)

BACKGROUND: Health and Safety Code, ch. 481 is the Texas Controlled Substances Act. It categorizes illegal substances into penalty groups and provides penalties for the manufacture, delivery, and possession of controlled substances. Drugs are placed into penalty groups based on their dangerousness, with penalty group 1 having the most serious drugs.

DIGEST: CSHB 2671 would expand penalty group 1 of the Texas Controlled Substances Act to include Phenazepam, U-47700, and AH-7921. The bill would add to penalty group 3 three substances: Carisoprodol, Etizolam, and Tramadol.

The bill would take effect September 1, 2017, and would apply only to offenses committed on or after that date.

SUPPORTERS SAY: CSHB 2671 would update Texas drug laws to better protect the public. The bill would add to the penalty groups dangerous drugs that are made to thwart Texas laws by being similar, but not identical to, other illegal substances. Manufacturers can quickly and easily tweak molecular compounds to skirt the state's laws, and the bill would update the state's penalty group 1 to reflect two new synthetic opioids and a designer

medication, Phenazepam. The bill also would place in penalty group 3 another designer medication, Etizolam. The bill would place two medications into penalty group 3, Carisoprodol and Tramadol, which have been placed into schedules of controlled drugs but have been overlooked for placement in a penalty group.

CSHB 2671 would not contribute to the over-criminalization of drug offenses. The bill is focused on revising the list of drugs to include new dangers and would not be the vehicle to alter drug penalties.

OPPONENTS SAY:

Adjusting penalty groups might be a good opportunity to examine the structure of the state's drug penalties to combat the over-criminalization of drug offenses. Over-criminalization can make it harder to address the underlying problems driving drug abuse.

NOTES:

A companion bill, SB 2176 by Hughes, was approved by the Senate Committee on Criminal Justice on April 18 and recommended for the Senate's local and uncontested calendar.

SUBJECT: Expanding qualifications for petitioning for orders of nondisclosure

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 7 ayes — Moody, Hunter, Canales, Gervin-Hawkins, Hefner, Lang, Wilson

0 nays

WITNESSES: For — Greg Glod, Texas Public Policy Foundation; Doug Deason; (*Registered, but did not testify*: Jerome Greener, Americans for Prosperity TX; Hetty Borinstein and Chas Moore, Austin Justice Coalition; Kathryn Freeman, Christian Life Commission; Reginald Smith, Communities for Recovery; Latosha Taylor, Grassroots Leadership; Glenn Scott, Left Up To Us; Darwin Hamilton and Lauren Johnson, Reentry Advocacy Project; Michael Barba, Texas Catholic Conference of Bishops; Shea Place, Texas Criminal Defense Lawyers Association; Douglas Smith, Texas Criminal Justice Coalition; Joshua Houston, Texas Impact; Yannis Banks, Texas NAACP; Marc Levin, Texas Public Policy Foundation, Right on Crime; Teresa Dozier; Karen Gentry; Lauren Oertel; Thomas Parkinson)

Against — None

BACKGROUND: Government Code, sec. 411.072 requires a court to issue an order of nondisclosure of criminal records for a person receiving discharge and dismissal of certain nonviolent misdemeanors for which the person was placed on deferred adjudication community supervision. This applies only to a person who has not been convicted of or placed on deferred adjudication for another offense, other than a fine-only traffic offense, at any time prior to the order being granted.

Government Code, subch. E-1 provides procedures for allowing a person placed on deferred adjudication community supervision for or convicted of certain offenses to petition the court that placed the person on deferred adjudication for an order of nondisclosure. Some of these procedures can be used by persons who previously have been placed on deferred adjudication for or convicted of another offense. Before a petition can be

granted, notice must have been given to the state, there must have been an opportunity for a hearing, and a determination must have been made that the person is eligible to file the petition and that the order is in the best interest of justice.

Some have pointed to the effects of a criminal record on a person's future employment and housing prospects and called for expanding the circumstances under which a person can petition for an order of nondisclosure, which seals a criminal record from the eyes of the general public while allowing it to remain visible to law enforcement and employers in sensitive fields.

DIGEST:

CSHB 3016 would allow persons convicted of various offenses to petition for orders of nondisclosure under certain circumstances and would alter some waiting periods for persons already eligible to petition.

Modification to current petition requirements. The bill would allow a person to petition for an order of nondisclosure of criminal history if that person was ineligible to receive an automatic order solely due to a judge's affirmative finding that issuing such an order was not in the best interest of justice. A person convicted of a misdemeanor punishable by a fine only could petition for an order of nondisclosure immediately upon the date of completion of the person’s sentence. If the misdemeanor was not punishable by a fine only, the person could petition on the second anniversary of the date of completing the sentence.

State jail felonies. The bill would allow a person convicted of a state-jail felony (180 days to two years in a state jail and an optional fine of up to $10,000) for possession of marijuana and drugs in penalty groups 1, 1-A, 2, and 2-A to petition for an order of nondisclosure of criminal history related to the offense. This person could only petition for the order if the person:

- had never been convicted of or placed on deferred adjudication for another crime, other than a fine-only traffic offense;
- had successfully completed any imposed community supervision and any term of confinement; and
- had paid all fines, costs, and restitution imposed.

The person would have to wait to petition until the fifth anniversary of completion of community supervision if he or she was placed on community supervision or the fifth anniversary of the date of completing the sentence.

Driving while intoxicated offenses. The bill would allow a person convicted of driving under the influence with a blood-alcohol concentration less than 0.15 to petition for an order of nondisclosure of criminal history related to the offense. This person could petition for the order only if the person:

- had never been convicted of or placed on deferred adjudication community supervision for another offense, other than a fine-only traffic offense;
- had successfully completed any imposed community supervision and any term of confinement;
- had paid all fines, costs, and restitution imposed; and
- had successfully completed a period of at least six months of driving restricted to a motor vehicle equipped with an ignition interlock device as a part of the sentence.

A person would have to wait to petition until the second anniversary of completion of community supervision if he or she was placed on community supervision, or the third anniversary of the date of completion of the sentence.

If the period of restricted driving was not completed as part of the person's sentence, the court could, as a condition of entering a future order, require the person to complete a period of at least six months of restricted driving. After receiving evidence sufficient to the court to establish that a person ordered to complete a period of restricted driving had done so and had successfully completed all other terms of the order, the court would have to issue an order of nondisclosure.

The court would not be able to issue an order of nondisclosure if an attorney representing the state presented evidence sufficient to the court that demonstrated the commission of the offense for which the order was

sought resulted in a motor vehicle accident involving another person, including a passenger in the vehicle of the person seeking the order.

Disclosure of records. A criminal justice agency would be allowed to disclose criminal records that were subject to a nondisclosure order for the purpose of compliance with any federal law requirements, including conditions for receiving federal highway funds.

This bill would take effect on September 1, 2017, and would allow people to petition for orders of nondisclosure for offenses committed before, on, or after that date.

NOTES:

According to the Legislative Budget Board, the bill would have a positive but indeterminate fiscal impact to the state due to anticipated increases in civil filing fee revenue associated with an increase in the number of persons filing a petition for an order of nondisclosure.

A companion bill, SB 1340 by Hughes, was referred to the Senate Criminal Justice Committee on March 14.

SUBJECT: Allowing chiropractors to determine if a student sustained a concussion

COMMITTEE: Public Education — favorable, without amendment

VOTE: 8 ayes — Huberty, Bernal, Bohac, Dutton, Gooden, K. King, Koop, VanDeaver

3 absent — Allen, Deshotel, Meyer

WITNESSES: For — Kelly Ryder and Ken Tomlin, Texas Chiropractic Association; (*Registered, but did not testify*: Dax Gonzalez and Robert Westbrook, Texas Association of School Boards)

On — (*Registered, but did not testify*: Kara Belew, Monica Martinez, and Shelly Ramos, Texas Education Agency)

BACKGROUND: Education Code, sec. 38.156 requires that a student be removed from interscholastic athletics activities if a coach, physician, licensed health care professional, or a person authorized to make medical decisions for the student believes he or she may have sustained a concussion during the activities. Some have suggested that current law does not allow all appropriate health professionals to make a determination that a student has sustained a concussion during interscholastic athletic activities.

DIGEST: HB 3024 would add licensed chiropractors to the list of those able to make a determination that a student may have sustained a concussion during interscholastic athletic activities.

This bill would take effect immediately if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2017.

SUBJECT: Establishing the 32nd Judicial District Juvenile Board

COMMITTEE: Corrections — committee substitute recommended

VOTE: 6 ayes — White, Allen, S. Davis, Romero, Sanford, Schaefer

1 nay — Tinderholt

WITNESSES: For — None

Against — None

On — (*Registered, but did not testify*: Kaci Singer, Texas Juvenile Justice Department)

BACKGROUND: Human Resources Code, ch. 152 establishes the juvenile board for Fisher, Mitchell, and Nolan counties, consisting of:

- a county judge from Fisher, Mitchell, or Nolan County elected by a majority vote of the county judges from those counties;
- the 32nd Judicial District judge or the county court at law judge in Nolan County;
- the city manager of Sweetwater or another person appointed by the Sweetwater City Commission, if the city agrees to pay certain salaries for Nolan County personnel and other expenses;
- the superintendent of the Sweetwater ISD or another person appointed by the Sweetwater ISD board of trustees, if the district agrees to pay certain salaries for Nolan County personnel and other expenses;
- one person each appointed by the Fisher County Commissioners Court, the Mitchell County Commissioners Court, and the Nolan County Commissioners Court;
- the county attorney of Fisher, Mitchell, or Nolan County, selected by a majority vote of the county judges of those counties; and
- one person selected by a majority vote of the county judges, subject to a confirmation vote of the commissioners courts.

DIGEST:

CSHB 4280 would include Fisher County, Mitchell County, and Nolan County in the 32nd Judicial District Juvenile Board.

The juvenile board's composition would be changed to consist of the county, statutory county, and district judges in Fisher, Mitchell, and Nolan counties. The juvenile board would be required to elect one of its members as chairman.

The bill also would require the board to hold regular meetings, maintain an advisory council composed of one person from each county, and select a fiscal officer from among the three counties' treasurers or auditors.

The bill would allow commissioners courts from the three counties to pay the board members an annual supplemental compensation from the counties' general funds or any other available funds. Statutory provisions for the defunct Fisher, Mitchell, and Nolan counties juvenile board would be repealed.

The bill would take effect October 1, 2017.

SUPPORTERS SAY:

CSHB 4280 would reconstitute the juvenile board for Fisher, Mitchell, and Nolan counties as the 32nd Judicial District Juvenile Board and modify the board to make it more closely resemble other multi-county juvenile boards in the state. Clarifying the operation, administration, and composition of the juvenile board would better equip it to meet the needs of the counties it serves.

Allowing discretion by commissioners courts on the pay of board members would be consistent with the approach taken by other counties' juvenile boards, and this bill would extend that practice to the juvenile board serving Fisher, Mitchell, and Nolan counties.

OPPONENTS SAY:

CSHB 4280 would cost counties money, allow for elected officials to receive a pay increase, and expand the scope of governmental oversight. The bill would not cap the amount that commissioners courts could pay board members, which could lead to potential abuse and double compensation for work that elected officials already were doing.

NOTES:

The bill as filed differs from the committee substitute in that HB 4280 would have:

- required the commissioners courts to annually pay $2,400 in supplemental compensation to juvenile board members;
- allowed the commissioners courts to reimburse board members for job-related expenses;
- required the juvenile board to pay the salaries of juvenile probation personnel and other expenses to the extent it received state aid for this purpose.

SUBJECT: Using state participation account funds for certain water facilities

COMMITTEE: Natural Resources — committee substitute recommended

VOTE: 11 ayes — Larson, Phelan, Ashby, Burns, Frank, Kacal, T. King, Lucio, Nevárez, Price, Workman

0 nays

WITNESSES: For — (*Registered, but did not testify*: Larijai Francis and Tom Tagliabue, City of Corpus Christi and Corpus Christi Aquifer Storage and Recovery Conservation District; Sarah Floerke Gouak, Lower Colorado River Authority; Scott Norman, Texas Association of Builders; Stephen Minick, Texas Association of Business; Justin Yancy, Texas Business Leadership Council; Wiley Cloud, Texas Onsite Wastewater Association; Perry Fowler, Texas Water Infrastructure Network (TXWIN); Randy Chelette; Ron Suchecki)

Against — (*Registered, but did not testify*: Carol Birch, Public Citizen)

On — Ken Kramer, Sierra Club - Lone Star Chapter; Bech Bruun, Texas Water Development Board; (*Registered, but did not testify*: Jessica Zuba, Texas Water Development Board)

BACKGROUND: The State Participation Program is a financial assistance program for water projects administered by the Texas Water Development Board (TWDB). Under the program, the TWDB may use funds from the state participation account to provide financial assistance and assume a temporary ownership interest in certain facilities, including reservoirs and water treatment facilities.

Water Code, sec. 16.131, specifies projects authorized for funding under the state participation account. The board may not use the account to finance a project if the applicant has failed to complete a request by the executive administrator or a regional planning group for certain information, including a water infrastructure financing survey.
Sec. 16.135 requires that before the board may acquire or develop a

facility, it find affirmatively that:

- it is reasonable to expect that the state will recover its investment;
- the facility's cost exceeds the current financing capabilities of the area involved, and the optimum regional development of the facility cannot be reasonably financed without state participation;
- the facility's acquisition will serve the public interest; and
- the facility to be constructed or reconstructed contemplates the optimum regional development reasonably required under the site's existing circumstances.

DIGEST:

CSHB 3987 would direct the comptroller to establish a subaccount in the Texas Water Development Board (TWDB) state participation account called the state participation account II. The TWDB could transfer funds between the state participation account and the state participation account II at the board's discretion.

The TWDB could use the state participation account II to provide financial assistance to develop a desalination or aquifer storage and recovery facility under the state water plan. The board could act singly or partner with a public or private entity. The bill would not require the TWDB to adhere to a requirement that an applicant finance a portion of the cost of the facility. The TWDB could assist an applicant with securing a permit for a facility.

The board findings requirement in Water Code, sec. 16.135 would not apply to use of state participation account II to develop a facility by acquiring it, except that the TWDB first would have to find that it was reasonable to expect to recover investments in the facility and that its acquisition would serve the public interest.

The bill also would require the board to establish a point system to prioritize facilities seeking financial assistance under the state participation account II. The TWDB could not issue more than $200 million in water financial assistance bonds from the state participation account II.

The TWDB could not provide financial assistance under the state

participation account II if the board did not use the account before September 1, 2022.

CSHB 3987 would take effect September 1, 2017.

SUPPORTERS SAY:

CSHB 3987 would create a fund within the Texas Water Development Board (TWDB) state participation account specifically to authorize the board to provide financial assistance to develop desalination and aquifer storage and recovery facilities. While the original state participation account already could fund these facilities, the bill would set up a specific fund for underground facilities that store water more effectively than large reservoirs at the surface, which are susceptible to evaporation.

The bill also would allow the TWDB to fund all of the costs for these facilities rather than just the excess capacity or the amount the applicant could not reasonably afford. This allowance would encourage both private and public entities to apply for financial assistance, expanding desalination and aquifer storage and recovery projects.

It would not be necessary for the board to make a finding that the local area could not afford to construct a water facility because the state could invest in the project and own 100 percent of the facility.

The water infrastructure financing survey required for projects under the original state participation fund is intended to estimate how much funding will be needed for water projects. Because the TWDB could act by itself to develop a project under account II, there would be no local partner to fill in the survey, and this provision would not be necessary.

It would be appropriate for the board to assist applicants in securing permits under the state participation account II because the TWDB could be a joint owner of the facility.

OPPONENTS SAY:

CSHB 3987 contains certain provisions that would exempt state participation account II funding from important requirements. The bill would not require the TWDB to make certain findings before acquiring a facility, including a finding that the local interest could not finance the project. The board should not use state resources to fully fund and acquire

a facility for which a local entity could pay.

The bill also should require an applicant to complete a request by the TWDB executive administrator or a regional planning group, including a water infrastructure financing survey. Applicants for funds under the original state participation account already must complete this survey, which is important to bolster responses and help the TWDB gather information.

Language in the bill that would authorize the board to assist an applicant with securing a permit is too broad and could be interpreted to include legal counsel, which would be inappropriate.

NOTES:

The committee substitute would differ from the filed bill in that CSHB 3987 would authorize the Texas Water Development Board to fully acquire a facility through the state participation account II and would allow the state to financially assist desalination projects using any source of brackish or salt water.

A similar bill, SB 1775 by Hinojosa, was referred to the Senate Committee on Agriculture, Water, and Rural Affairs on March 23.

SUBJECT: Authorizing Texas-domiciled life insurers to invest in certain loans

COMMITTEE: Insurance — committee substitute recommended

VOTE: 9 ayes — Phillips, Muñoz, R. Anderson, Gooden, Oliverson, Paul, Sanford, Turner, Vo

0 nays

WITNESSES: For — Jay Thompson, American National; (*Registered, but did not testify*: Jennifer Cawley, Texas Association of Life and Health Insurers)

Against — None

On — (*Registered, but did not testify*: Jamie Walker, Texas Department of Insurance)

BACKGROUND: Insurance Code, sec. 425.118 authorizes an insurance company to make certain investments backed by a valid first lien on real property or a leasehold estate in real property located in the United States.

Other states have increased the types of real estate loans in which domestic life, health, and accident insurers are authorized to invest, including interest-only loans, self-insured loans, and mortgages on leasehold estates. Some observers say Texas should join these states in expanding the types of loans in which insurers may invest.

DIGEST: CSHB 3803 would specify that the unexpired term of a leasehold estate would include any renewal options exercisable by the lessee when determining the duration of a leasehold estate and when the term of an obligation secured by a first lien on a leasehold estate in real property would amortize.

Under the bill, an obligation secured by a first lien on a leasehold estate in real property would be payable in installments of amounts sufficient to ensure that, at any time during the original term of the obligation, the principal balance was not greater than it would have been if the obligation

had been amortized over the original term of the obligation in equal payments of principal and interest, with payments of interest only for the first five years of the original term of the obligation.

The aforementioned payment structure would not apply to an obligation secured by a first lien on a leasehold estate in real property if:

- the amount of the obligation did not, as of the date the obligation was acquired, exceed 75 percent of the value of the leasehold estate;
- the lease agreement provided that the fee simple estate in the real property transferred automatically to the lessee by the expiration of the term of the leasehold estate, including any renewal options exercisable by the lessee; or
- the lease agreement provided that the lessee had an option to purchase the fee simple estate in the real property by the expiration of the term of the leasehold estate, including any renewal options exercisable by the lessee, for less than 10 percent of the appraised value of the real property, and the insurance company had a contractual right if the lessee did not exercise that option to acquire the fee simple estate in the real property for that same amount, by assignment from the lessee or otherwise.

An insurer could make investments backed by uninsured buildings on real property if:

- the borrower maintained a net worth as indicated in the borrower's audited financial statements for the most recent fiscal year of at least the greater of five times the amount of the indebtedness or $100 million; and
- the insurance company had recourse against the borrower or the borrower's guarantor.

For an obligation secured by a leasehold estate, property insurance would not be required if:

- the tenant assigned the lease to the insurance company; and

- the lease agreement was in writing and provided that if a building on the property was damaged or destroyed, the tenant or the tenant's guarantor would be obligated to rebuild or restore the damaged or destroyed building to its condition immediately before the damage or destruction or to compensate the owner for the loss arising from the damage or destruction.

The bill would take effect September 1, 2017, and would apply to an investment made on or after that date.

SUBJECT: Removing fees requirements for electricians set by local governments

COMMITTEE: Licensing and Administrative Procedures — committee substitute recommended

VOTE: 7 ayes — Kuempel, Guillen, Frullo, Geren, Herrero, Paddie, S. Thompson

0 nays

2 absent — Goldman, Hernandez

WITNESSES: For — Thomas Edds; (*Registered, but did not testify*: Jon Fisher, Associated Builders and Contractors of Texas; CJ Tredway, Independent Electrical Contractors of Texas; Annie Spilman, National Federation of Independent Business-Texas; Michael Jewell, Solar Energy Industries Association; J.D. Rimann, Texas Public Policy Foundation; Charlie Hemmeline, Texas Solar Power Association)

Against — (*Registered, but did not testify*: TJ Patterson, City of Fort Worth); Leonard Aguilar, Texas Building Trades

On — (*Registered, but did not testify*: Leonard Aguilar, Texas Building Trades; George Ferrie, Texas Department of Licensing and Regulation)

BACKGROUND: Occupation Code, sec. 1305.201(a)(4) does not prohibit a municipality or region from regulating electricians or residential appliance installers by collecting permit fees for municipal or regional licenses and examinations for work performed in the municipality or region.

DIGEST: CSHB 3329 would prohibit municipalities or regions from collecting a permit fee, registration fee, administrative fee, or any other fee from a licensed electrician who performed work in the municipality or region. It would not prohibit a municipality or region from collecting a building permit fee.

The bill would take effect September 1, 2017.

SUPPORTERS SAY:

CSHB would protect electricians from having to pay duplicative and excessive fees to municipalities if they already have a state electrician's license. Cities currently may charge electricians when they register their state license to work in the city or require payment for a city license. Electricians already pay a state licensing fee, and requiring them to pay more fees in each city where they work is unfair, especially for smaller companies or individual electricians who may handle minor jobs in multiple cities.

The bill makes clear that it would not prohibit a municipality from collecting building permit fees, so cities could make up lost revenue by rolling registration and licensing fees into the overall building permit fee. This would be more appropriate because it would better reflect the city's involvement in a project. Currently, an electrician may be registered in a city and do multiple jobs there, necessitating multiple inspections by the city, but only be assessed one licensing or registration fee. It would make more sense to charge based on the number of jobs that had to be inspected by including these costs in a building permit.

CSHB 3329 would not prohibit cities from requiring electricians to register. It simply would not allow them to charge fees. The bill would not compromise public safety because all electricians must meet state licensing standards, regardless of what municipalities might require.

OPPONENTS SAY:

CSHB 3329 would diminish oversight of electricians, potentially weakening public safety. Fees generated by these licenses or registrations are necessary to ensure that electrical work is inspected and determined to be safe. They also can be an important revenue source for many cities.

NOTES:

A companion bill, SB 1797 by Campbell, was considered in a public hearing of the Senate Business and Commerce Committee on April 18 and left pending.

SUBJECT: Assessing costs and fees in certain lawsuits under public information laws

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

VOTE: 9 ayes — Smithee, Farrar, Gutierrez, Hernandez, Laubenberg, Murr, Neave, Rinaldi, Schofield

0 nays

WITNESSES: For — William Stowe, Texas Association of Broadcasters; Laura Prather, Texas Press Association, Freedom of Information Foundation; Fred Hartman, Texas Press Association; Don Adams; (*Registered, but did not testify*: Kelley Shannon, Freedom of Information Foundation of Texas; Guy Herman, Statutory Probate Courts of Texas; Joshua Houston, Texas Impact; Donnis Baggett, Texas Press Association)

Against — (*Registered, but did not testify*: Jennifer Riggs, Freedom of Information Foundation)

On — Tom Oney, Lowe Colorado River Authority; Zindia Thomas, Texas Municipal League

BACKGROUND: Government Code, sec. 552.321 allows a requestor of public information or the attorney general to file suit for a writ of mandamus compelling a governmental body to make information available for public inspection if the body refuses to comply with public information laws.

Sec. 552.3215 allows an individual to file with a district or county attorney a complaint against a governmental body alleging a violation of public information laws. Within 31 days, the prosecutor must determine and inform the complainant as to whether the alleged violation was committed and whether action will be brought against the body.

In actions brought under the above provisions, sec. 552.323 requires the court to assess costs of litigation and reasonable attorney fees incurred by a plaintiff who substantially prevails, except in certain circumstances.

Concerns have been raised that in a suit, governmental bodies can prevent a plaintiff from recovering litigation costs and attorney fees by disclosing the requested information before a ruling would be delivered in favor of the requestor.

DIGEST:

CSHB 2783 would allow a court to assess costs of litigation and reasonable attorney fees incurred by a plaintiff to whom a governmental body voluntarily released the requested information after filing an answer to actions brought under Government Code, secs. 552.321 and 552.3215.

The bill would take effect September 1, 2017, and would apply only to a suit filed on or after that date.

NOTES:

CSHB 2783 differs from the filed bill in that the committee substitute would allow, rather than require, courts to assess litigation costs and attorney fees incurred by a plaintiff in cases where a governmental body voluntarily released requested information in a suit.

SUBJECT: Allowing specialty consults for certain conditions in abuse investigations

COMMITTEE: Juvenile Justice and Family Issues — committee substitute recommended

VOTE: 5 ayes — Dutton, Dale, Moody, Schofield, Thierry

2 nays — Biedermann, Cain

WITNESSES: For — Chad Tyson and Rana Tyson, Fractured Families, LLC; Vicky Brower; Bria Huber; Rachael Robertson; (*Registered, but did not testify*: Judy Powell, Parent Guidance Center; Andrew Huber)

Against — None

On — (*Registered, but did not testify*: Liz Kromrei, Department of Family and Protective Services; Evelyn Delgado, Texas Department of State Health Services)

BACKGROUND: Family Code, ch. 261, subch. D governs investigations of child abuse and neglect by the Department of Family and Protective Services (DFPS).

The Forensic Assessment Center Network (FACN) is a group of physicians from several medical schools in Texas who have expertise in child abuse and neglect. Through a joint project with DFPS, FACN provides support for Child Protective Services (CPS) investigative staff through a toll-free number and website. It also provides ongoing education to CPS workers about medical aspects of child maltreatment.

Health and Safety Code, ch. 1001, subch. F governs the Texas Medical Child Abuse Resources and Education System (MEDCARES), which is a grant program established by the Department of State Health Services to develop and support regional programs to improve the assessment, diagnosis, and treatment of child abuse and neglect.

DIGEST: CSHB 2848 would require that future agreements to assist in abuse and neglect investigations between the Department of Family Protective Services (DFPS) and the Forensic Assessment Center Network (FACN) or

Texas Medical Child Abuse Resources and Education System (MEDCARES) include certain requirements. Under such an agreement, the network or system would have to be able to obtain consultations with physicians specializing in identifying unique health conditions, including:

- rickets;
- Ehlers-Danlos Syndrome;
- osteogenesis imperfecta;
- vitamin D deficiency; and
- other similar metabolic bone diseases or connective tissue disorders.

A peer-review process would be required to resolve disputes about the cause of a child's injury or the presence of one of the unique health conditions.

The bill's requirements would apply only if DFPS received an appropriation to enter into an agreement with FACN or MEDCARES for assistance in its abuse and neglect investigations.

The bill would take effect September 1, 2017, and would apply only to a contract entered into or renewed on or after that date.

SUPPORTERS SAY:

CSHB 2848 would ensure that abuse and neglect investigators had the best information available and were more informed about potential alternative causes for bone fractures and other symptoms. The Forensic Assessment Center Network and the Texas Medical Child Abuse Resources and Education System help with investigations, but there is currently no emphasis on unique diseases that present in a manner similar to signs of abuse or neglect. Requiring access to physicians who specialize in unique health conditions in future agreements between the DFPS and these entities would help keep uncommon diseases from subjecting families to unwarranted state intervention, which can result in severe emotional distress and financial hardship.

OPPONENTS SAY:

CSHB 2848 would create an unnecessary cost to the state for an issue that already is addressed by existing resources. While unfortunate

misunderstandings may occur, this bill would create an administrative redundancy without offering meaningful benefits to justify the expense.

NOTES:

According to the Legislative Budget Board's fiscal note, CSHB 2848 would have a negative impact to general revenue related funds of $448,292, contributing to an all-funds cost of about $500,000, during fiscal 2018-19 to provide specialty consultations and support the peer review process.

SUBJECT: Providing certain rights for fire fighters under investigation

COMMITTEE: Urban Affairs — committee substitute recommended

VOTE: 5 ayes — Alvarado, Bernal, Elkins, Isaac, J. Johnson

0 nays

2 absent — Leach, Zedler

WITNESSES: For — David Gonzalez, Laredo Fire Fighters Association; (*Registered, but did not testify*: David Crow, Arlington Professional Fire Fighters; Rob Gibson, Fort Worth Firefighters Association; Michael Glynn, Fort Worth Firefighters Association - IAFF Local 440; Johnny Villarreal, Houston Fire Fighters Local 341; Rolando Solis, Laredo Fire Fighters Association; Aidan Alvarado, Laredo Fire Fighters Association; Michael Silva, Mission Fire Fighters Association; Glenn Deshields, Texas State Association of Fire Fighters)

Against — John Carlton, Texas State Association of Fire and Emergency Districts

BACKGROUND: Under Local Government Code, sec. 143.312 fire fighters and police officers under investigation by a municipality for alleged misconduct are granted certain rights if they are employed by a municipality with a population of 460,000 or more that operates under a city manager form of government. These protections do not extend to a municipality with a population of 1.5 million or more (Houston) or a municipality that has adopted the Fire and Police Employee Relations Act.

DIGEST: CSHB 2351 would grant to all fire fighters under investigation for misconduct, with the exception of those in Houston, the same rights granted to fire fighters and police employed by certain municipalities with a population of 460,000 or more. These rights also would be granted to fire fighters being investigated by emergency services districts.

The rights provided to fire fighters under investigation for misconduct

would include:

- an investigator may interrogate the fire fighter who is the subject of an investigation only during normal working hours, except under certain circumstances;
- a person may not be assigned to conduct an investigation if the person is the complainant;
- a fire fighter must be informed 48 hours before an interrogation;
- an interrogation session may not be unreasonably long; and
- other rights granted under Local Government Code, sec. 143.312.

These protections would not apply to an investigation involving family violence punishable as a felony or class A misdemeanor (up to one year in jail and/or a maximum fine of $4,000) or class B misdemeanor (up to 180 days in jail and/or a maximum fine of $2,000). The bill would prohibit an applicable municipality or emergency services district from taking punitive action against a fire fighter unless the investigation was in substantial compliance with Local Government Code, sec. 143.312.

Any conflict between the bill and Government Code, ch. 614, which provides general provisions for police officers and fire fighters, CSHB 2351 would control.

The bill would take effect September 1, 2017, and would apply to an investigation initiated on or after that date.

SUPPORTERS SAY:

CSHB 2351 would give to all fire fighters in Texas cities smaller than Houston the same rights as fire fighters employed by cities with populations larger than 460,000. Most fire fighters have few rights in Texas during investigative procedures if they are not employed by large cities. This bill simply would provide for common rights already available to many fire fighters in certain cities.

Without these protections, fire fighters may experience hardship due to being suspended without pay during an investigation or being threatened with termination before an investigation is even finished. There have been instances in which fire fighters have been punished for missing work due

to an investigation and other unfair practices, and the bill would remedy many of these situations.

Although emergency services districts may see an increase in some costs, the rights provided in the bill should be common practice. Fire fighters should not be subject to unfair employment practices simply because they are not employed by a major city.

OPPONENTS SAY:

CSHB 2351 would expand investigation requirements for emergency services districts and could increase administrative costs to those districts. These emergency services districts are limited in their ability to raise tax revenue and may not be able to afford the new requirements placed on them by this bill.